



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/168831

PRELIMINARY RECITALS

Pursuant to a petition filed September 21, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Washington County Department of Social Services in regard to Child Care, a hearing was held on November 10, 2015, at West Bend, Wisconsin.

The issue for determination is whether the Washington County Department of Social Services (the agency) correctly denied the Petitioner's application for child care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Julie Williamson, Economic Support Lead Supervisor
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On September 11, 2015, the agency sent the Petitioner a Notice of Eligibility Child Care, advising her that she was being denied childcare effective September 1, 2015. (Exhibit 1)

3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 21, 2015. (Exhibit 5)
4. The Petitioner and her husband live with their 16-year-old daughter. (Testimony of Petitioner)
5. As of November 10, 2015, Petitioner's grandchild was three months old, so he was born in August 2015. (Testimony of Petitioner)
6. Petitioner, on behalf of her daughter, applied for childcare benefits shortly thereafter. (Testimony of Petitioner; Testimony of Julie Williams)
7. Petitioner's household income is \$11,575.50 per month. (Exhibits 2 and 3; Testimony of Petitioner)

DISCUSSION

In order for initial applicants to be eligible for Child Care benefits, gross household income must be below 185% of the Federal Poverty Limit (FPL). *Wisconsin Child Care Assistance Manual* §1.5.1.1 For on-going eligibility, income cannot exceed 200% FPL. *Wisconsin Child Care Assistance Manual* §1.5.1.2 All available earned and unearned gross income must be counted. *Id.* at §1.5.1 and §1.5.2

This case deals with an initial application for benefits. It is undisputed that Petitioner's household consists of four people, the Petitioner, her husband, her minor daughter and the daughter's child. 185% of FPL for a household of four is \$3758.54 per month.¹

It is undisputed that Petitioner's household income far exceeds the income limit for the Wisconsin Shares Child Care Program.

The Petitioner argues that her income and her husband's income should not be counted. However, under the rules of the Wisconsin Shares program, all four people are part of the same assistance group.

"Assistance Group" is defined as, "The group within the household that is relevant to child care eligibility." *Wisconsin Child Care Assistance Manual* §1.2

"Assistance Group" is further defined in *Wisconsin Child Care Assistance Manual* §1.4.1:

Assistance Groups consist of any of the following individuals who reside in the same household:

- **An individual who is a parent caring for a child**
- **The individual's dependent children**
- **Any dependent children of the individual's dependent children**
- The individual's spouse or any non-marital co-parent
- The spouse's dependent children
- The non-marital co-parent's dependent children

Emphasis added

¹ <https://www.federalregister.gov/articles/2015/01/22/2015-01120/annual-update-of-the-hhs-poverty-guidelines#t-1>

Based upon the foregoing provision, the Petitioner and her husband must be included in the same household as their daughter and grandchild. Indeed, the Petitioner testified that she and her husband pay for all of their daughter's and grandchild's needs, including food, shelter and clothing.

The Petitioner argued that the State should pay for childcare, because her daughter and grandchild are receiving BadgerCare benefits. The grandchild is likely receiving benefits as a continuously eligible newborn, through the month of his first birthday. *BadgerCare+ Eligibility Handbook* §8.2 However, it is not clear why Petitioner's daughter is receiving benefits, because Pregnant Woman benefits end after 60-days. *BadgerCare+ Eligibility Handbook* §8.1 Further, under BadgerCare rules, a household is defined as the taxpayer and her dependents. *BadgerCare+ Eligibility Handbook* §2.3.2 Because Petitioner's daughter and grandchild are her dependents, her taxable income and her husband's taxable income should be counted and might very well put her daughter over the income limit. *BadgerCare+ Eligibility Handbook* §2.3.2

The daughter might also be ineligible, if the daughter has access to health insurance through Petitioner or Petitioner's husband. See *BadgerCare+ Eligibility Handbook*. §7.1.2

I leave it to the discretion of the county agency to review the BadgerCare+ case to see if benefits were correctly issued and to see whether Petitioner's daughter needed to meet a deductible for her benefits.

The Petitioner argued that because she and her husband already pay for everything else, that the rules should not apply to them and that they should not have to pay for childcare so their daughter can complete high school.

First, there is nothing unreasonable about expecting parents who earn close to \$12,000 per month to do the loving and responsible thing and pay for their grandchild's daycare so their 16 year-old daughter can complete school and increase her ability to independently and adequately support herself and her child, one day in the future. The Wisconsin Shares Child Care program is meant to assist low income families.

Second, an Administrative Law Judge (ALJ) does not possess equitable powers, which means ALJs cannot make a decision based upon what a party might think is fair, but must, instead, apply the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); see also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985). "As a general matter, an administrative agency has only those powers as are expressly conferred or necessarily implied from the statutory provisions under which it operates [citation omitted]". *Brown County v. DHSS Department*, 103 Wis.2d 37, 43, 307 N.W.2d 247 (1981). "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).) Thus, I cannot make a determination on the basis of fairness. And if I could, I would not find this action to be unfair.

Petitioner should note that the father of the infant, even if a minor himself, has a legal obligation to support the child. If Petitioner seeks some relief from the financial burden of caring for her grandson, she should be seeking said child support from her grandson's father, not from the State.

CONCLUSIONS OF LAW

The agency correctly denied the Petitioner's application for child care benefits.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of December, 2015

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 16, 2015.

Washington County Department of Social Services
Child Care Benefits